

Enhanced Border Security Act of 2001
Section by Section Explanation
Congressman Conyers, Congressman Cannon,
Congressman, Berman and Congressman Graves
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Section 1. Short Title

This Act may be cited as the **Enhanced Border Security Act of 2001**.

Section 2. Access to and Coordination of Law Enforcement and Other Information

Summary. This section provides three things: a report, a plan, and protections for information sharing with DOS and INS.

Background. The events of September 11 demonstrated that the Department of State (DOS) and the Immigration and Naturalization Service (INS) do not have access to the information they need to identify and intercept alien terrorists. Section 403 of the recent anti-terrorist legislation requires the FBI to provide the DOS and INS with access to NCIC-III and other databases (in extract form). In turn, DOS has four months to promulgate regulations to protect the information shared by the FBI.

Report. At issue is the information that DOS and INS need to screen visa applicants and applicants for admission to the United States. 90 days after enactment, DOS, INS, and the Director of Central Intelligence must submit a joint report to the House and Senate Judiciary Committees and Select Committees on Intelligence. That report must identify the information that those agencies need from the law enforcement and intelligence communities. The report must be prepared in consultation with the Office of Homeland Security (OHS) and the Foreign Terrorist Tracking Task Force (Task Force), and the law enforcement and intelligence communities are directed to cooperate with DOS, INS, CIA and OHS in the preparation of the report.

Plan. After the report is submitted and the appropriate Congressional committees consulted, DOS, INS, and CIA have 120 days to jointly develop and implement an information-sharing plan with the law enforcement and intelligence communities. OHS and the Task Force must be included in the planning and implementation, and the appropriate Congressional committees must be consulted.

Data Systems. The DOS, INS, and CIA, in consultation with the OHS, Task Force, and United States law enforcement and intelligence agencies shall, within 1 years of the plan's implementation, develop and implement a unified electronic data system to provide real-time access to relevant law enforcement and intelligence database information. The electronic

database system will be accessible to foreign service officers issuing visas and federal agents determining the admissibility of aliens to the United States.

Protections. The plan must contain certain protections against the misuse of the information shared, including: limitations on the use and re-dissemination of information, security and privacy protections, and provide a procedure for timely removal of obsolete or erroneous information.

Section 3. Ensuring Adequate Personnel and Technology Improvements at Ports of Entry

Summary. This section considers what additional staff, training, and technology is needed to secure security on the north and south borders.

Background. The recent anti-terrorist act tripled the number of INS border patrol agents and inspectors who are assigned to the northern border. Increasing manpower will not, standing alone, improve our border security. Additional steps must be taken.

FTE limitation. The INS has a statutory limit on how many full-time personnel it may hire. That limit can now be waived by the Attorney General.

Better INS pay and staffing. To help INS retain border patrol officers and inspectors, this section would raise their pay grade and permit the hiring of additional support staff.

Border patrol and customs training. To enhance our ability to identify and intercept would-be terrorists at the border, additional training (and cross-training) is required for border patrol and customs agents.

Better DOS information. This section authorizes funding to improve the security features of DOS screening of visa applicants. Improved security features include: better use of international intelligence information, more support staff, and continuously enhanced training of consular officers.

Technology funding. An additional \$50 million is provided to both the INS and the Customs Service to improve computer security, and IT development, etc. Existing technologies that enhance border security are to be improved and implemented more broadly. Federal agencies are to waive enrollment fees whenever possible, as an incentive for aliens to voluntarily participate in new screening technologies. This section would also permit INS to increase land border fees to offset the new costs.

Machine readable visas. The anti-terrorist act dealt with machine readable passports (for nations participating in the Visa Waiver Program) but did not look at MRVs issued by the United States. This section permits DOS to raise MRV fees (and to levy a surcharge when

a MRV is placed in a non-machine readable passport) and allows the DOS to continue to offset technology costs with the MRV fees it collects.

Section 4. Perimeter National Security Program

Summary. DOS and INS, in consultation with OHS and the Task Force, will study how best to screen travelers to the United States on the U.S. “perimeter” and report back to Congress in six months.

Background. To the degree that we can reasonably and realistically do so, we should attempt to intercept terrorists before they reach our borders. Accordingly, we should consider security measures not only at domestic ports of entry but also at the foreign ports of departure.

Preclearance and preinspection. The security measures should include expanding and developing procedures that screen travelers before they arrive at the United States and then expedite their entry once they do. Preclearance is a voluntary procedure whereby a traveler to the United States submits in advance to a screening for admissibility under the immigration laws, thus speeding up the arrival process because the inspector need only confirm identity. Preinspection is a mandatory procedure whereby an air traveler is screened by INS personnel at a foreign airport before boarding the plane.

Canada and Mexico. This section would require DOS and INS, in consultation with the OHS and Task Force, to evaluate whether these security procedures can be expanded to travelers to Canada and Mexico, as well as to the United States and to explore the feasibility of a collaborative effort by all three nations to set up a North American National Security perimeter.

Section 5. Implementation of Integrated Entry and Exit Data System

Summary. IIRIRA and the anti-terrorist act created the skeleton for the E/E system; this section describes what the system should contain.

Background. IIRIRA mandated the creation of a system to record the entry and exit of every non-U.S. citizen that enters the United States. The anti-terrorist act directed the Attorney General to fully implement the “E/E” system as soon as possible, with special instructions to look into biometric and tamper-resistant technologies.

Implementation of E/E system. First, this section directs INS to implement the E/E system as soon as practicable. Second, the INS should consider several items in fully implementing the system, particularly: integrating the Perimeter National Security program; implementing the technology standard for confirming identities (mandated by the anti-terrorist act) at all

ports of entry and consular posts; using biometric identifiers with arrival-departure records, visas, and other immigration documents; requiring MRVs and machine readable passports; and compiling arrival/departure and security databases.

Section 6. Foreign Service Officer Training

***Summary.* Consular officers should receive special training in identifying potential terrorists and other security threats to the United States.**

Background. The training that most foreign service officers have received is oriented toward identifying visa fraud generally and immigrant intent in nonimmigrant visa applicants. Instead, consular officers should focus more attention on persons who pose a safety or security threat.

Special training. This section would require that consular officers receive particular training in interagency and international intelligence communication regarding terrorism. (This section would also require that international and other intelligence be shared with the consular officers who screen visa applicants.) Additionally, consular officers must be trained in cultural sensitivity toward visa applicants, so as to avoid misunderstandings and to identify more terrorists.

Section 7. Passenger Manifest Information

***Summary.* All arriving flights from a foreign state must send passenger manifests in advance of arrival.**

Background. At present, United States airlines transmit passenger manifests in advance of arrival to the INS and Customs Service. A number of foreign carriers do not. If passenger manifests are received in advance of arrival, processing is more efficient, and security screening greatly enhanced.

Manifests. All arriving flights must provide manifests prior to arrival in some form. By 2003, the manifests must be transmitted electronically.

Section 8. Foreign Student and Exchange Visitor Program

***Summary.* For the monitoring program to serve our national security needs, there are data and reporting gaps that must be filled.**

Background. IIRIRA established a program to monitor foreign students and exchange visitors but, apart from a pilot program, was never implemented. The anti-terrorist act directed that the program be fully put in place by 2003 and expanded the schools covered by

the monitoring program to include flight schools, language training programs, and vocation schools.

Data collection. The monitoring program does not, at present, collect such critical information as the student's date of entry, port of entry, date of school enrollment, and date the student leaves school (e.g., graduates, quits). That information will now be collected.

Reporting requirements. To enter the United States as a foreign student, the following takes place: the student gets an acceptance / immigration document from an education institution (e.g., I-20, IAP-66), takes that document to a consulate, applies for a visa, enters the United States and is issued an I-94, and reports to school.

The problem under the current system is that the student's whereabouts is virtually unknown until the student enrolls for school and is again unknown if the student leaves school. The school has no way of knowing when/if the student has received a visa or entered the United States; the INS has no way to know if the student has reported for school; and the DOS has no way to know if the student has entered the United States or reported for school.

This section closes the gaps. It requires INS, in conjunction with DOS, to monitor the various steps involved in admitting foreign students and to notify the school of the student's entry. It also requires the school to notify INS if a student has not reported for school within 15 days of the beginning of term.

Section 9. Special Provision on Nonimmigrants From Certain Countries

***Summary.* No visa may be issued to an alien coming from a country designated as a state sponsor of terrorism, unless appropriate clearances are done by DOS to determine that the alien poses no safety or security threat to the United States**

Background. The DOS maintains a list of countries that are considered state-sponsors of terrorism. Visa applications submitted by individuals coming from those countries should be highly scrutinized.

Section 10. Review of Institutions and Other Entities Authorized to Enroll or Sponsor Certain Nonimmigrants

***Summary.* The INS is now required to conduct a periodic review of educational institutions to monitor their compliance with recordkeeping and reporting requirements. DOS is to conduct a similar review with exchange visitor programs.**

Background. While INS by regulation reviews educational institutions, reviews have not been done consistently in recent years. Some educational institutions are not diligent in their recordkeeping and reporting responsibilities.

Failure to comply. If an institution or program fails to comply, their authorization to accept foreign students may be revoked.

Section 11. Treatment of Immigration Inspectors as Law Enforcement Officers for Federal Retirement Programs

***Summary.* This section provides an incentive for inspectors to remain with the INS by considering them to be law enforcement officers for the purpose of determining retirement benefits.**

Background. The INS needs to retain experienced inspectors. One disincentive for inspectors to remain with the INS is the availability of superior retirement benefits in other law enforcement agencies.

Section 12. Certain Border Crossing Identification Cards

***Summary.* Funds are authorized to purchase needed machines. The deadline for border-crossers to acquire these cards is extended by a year.**

Background. Congress clearly means for immigration documents to enter the biometric age. The machine-readable border crossing cards that have been issued to many border-crossers by DOS are very much in line with intent. The problem is, however, that the INS does not have the machines to read the cards that have been issued. A separate but related problem is that the deadline for border-crossers to acquire these cards has also passed.

Section 13. Repeal of Time Limitation on Inspections

***Summary.* This section eliminates the 45-minute deadline for clearing arriving passengers.**

Background. The preinspection section in INA § 286(g) requires INS to clear a plane in 45 minutes. Given recent events, clearance procedures should not be rushed.